

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ZHN, LLC,

Plaintiff,

vs.

Case No. CIV-12-1289-M

**RANDY MILLER, LLC,
RANDY L. MILLER,
LIPPARD AUCTIONEERS, INC.,
TROY LIPPARD,
ANGIE LIPPARD,
JERRY WHITNEY and
UNITED COUNTRY REAL
ESTATE, INC. d/b/a UNITED
COUNTRY REAL ESTATE
SERVICES,**

Defendants.

**DEFENDANTS RANDY MILLER, LLC AND RANDY L. MILLER'S MOTION TO
ALLOW ADDITIONAL TIME TO DEPOSE ALEX MAGID**

COME NOW the Defendants, RANDY MILLER, LLC and RANDY L. MILLER ("Defendants"), by and through their attorneys of record, RANDY J. LONG and CLINT A. CLAYPOLE, of the firm FIELD, TROJAN, LONG & CLAYPOLE, P.C. and, pursuant to Fed. R. Civ. P. 30(d)(1) and Fed. R. Civ. P. 26(b)(2), and respectfully move this Court to grant them leave and allow additional time to depose Alexander Magid, representative of Plaintiff, ZHN, LLC. ("Magid"), states as follows.

I. SUMMARY OF THE CASE BASIS FOR THE REQUEST

Magid's deposition was originally scheduled in July and had to be rescheduled because Plaintiff had not provided a calculation, basis or formula of damages. Magid's deposition was taken on November 11, 2014. [Alex Magid Dep. (Nov. 11, 2014), Page 1, attached as Exhibit "1".]

This case involves numerous causes of action and multiple defendants such that seven (7) hours is not an adequate time to adequately discuss the basis of those claims. Magid was questioned by counsel for Lippard Auctioneers, Inc., Troy Lippard, Angie Lippard, Jerry Whitney and United Country Real estate, Inc. d/b/a United Country Real Estate Services from 9:03 a.m. until 4:04 p.m. [Alex Magid Dep. (Nov. 11, 2014), 5:1 - 6:6 attached as Exhibit "2".] and [Alex Magid Dep. (Nov. 11, 2014), 188:21-25 attached as Exhibit "3".] Magid was questioned by Defendants' counsel from 4:04 p.m. until the deposition was terminated by counsel for Magid at 6:26 p.m, after less than 2 1/2 hours. [Alex Magid Dep. (Nov. 11, 2014), 188:25 - 189:1-9 attached as Exhibit "4"; Alex Magid Dep. (Nov. 11, 2014), 260:25 attached as Exhibit "5".] Counsel for Defendants informed counsel for Plaintiff of the need for additional time prior to conclusion of the deposition and objected to closing the record. [Alex Magid Dep. (Nov. 11, 2014), 260: 6-18 attached as Exhibit "9".] Counsel for Magid would not agree to continue the deposition on November 11, 2014 [Exhibit "9" L. 9-14]. Counsel for Defendants was not able to fairly examine Magid in the 2 1/2 hours they were allowed on the date originally set for

Magid's deposition. Counsel believes an additional 4 hours will be required to fairly examine Magid.

During the course of the deposition, Magid was evasive and continually made long comments which were non-responsive to the question asked which lead to seventeen (17) objections to strike those responses as non-responsive to the question asked. Although the evasive and non-complete answers propounded throughout, the first of these objections did not occur until after the lunch break. Therefore, the seventeen objections occurred between 12:50 p.m. and the end of the Deposition. [Alex Magid Dep. (Nov. 11, 2014), 97:16 attached as Exhibit "6".] [Alex Magid Dep. (Nov. 11, 2014), 126:7, 145:3, 152:9, 159:9, 210:11-19, 236:17, 238:8-14, 238:24-25, 240:3, 254:25 - 255:1-2 attached as Exhibit "7".] Magid's answers revealed numerous claims of fraud, document destruction, conspiracy and related claims that are in excess of those even disclosed in written discovery. Many of these claimed were aimed at the Miller Defendants and were brought up during examination by Lippard's Counsel. In order to adequately prepare for trial, The Miller Defendants must be given a fair opportunity to examine Magid about those allegations.

The Plaintiff's first damage model, the basis for its calculation and a different damage calculation than set forth in Plaintiff's Amended Rule 26 Disclosure was first provided to counsel for Defendants during the deposition at 2:10 p.m. [Alex Magid Dep. (Nov. 11, 2014), 135:3-8 attached as Exhibit "8".] This required a substantial time of the deposition (38 pages of testimony which equates to over an

hour of time) to be devoted to how these new figures were calculated and how the formula supported them.

II. DEADLINES SET FORTH IN SCHEDULING ORDER

The Court entered an Amended Scheduling Order on November 20, 2013 which set the deadline for discovery as January 1, 2015. (Doc. 119). The Court recently entered an Order extending that deadline to February 1, 2015. (Doc. 143).

III. WHETHER OPPOSING COUNSEL OBJECTS

The undersigned counsel has discussed this motion with Counsel for Plaintiff and can state that Plaintiff objects to the relief sought in this motion. The undersigned counsel has discussed this motion with Counsel for the Lippard Defendants and can state that he has no objection the request.

IV. RELIEF REQUESTED

Defendants respectfully request that this Court enter an order extending the time allowed to depose a party provided in Fed. R. Civ. P. 26(b)(2) pursuant to Fed. R. Civ. P. 30(d)(1) and grant them leave to depose Alexander Magid for an additional four (4) hours.

DATED this 10th day of December, 2014.

Respectfully submitted,

/s/ Clint A. Claypole

Randy J. Long, OBA #5515

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of December, 2014, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit Notice of Electronic Filing to the following ECF registrants:

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